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BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 04-CR-234 (CBA)

v.

SALVATORE D. ROMANO, : January 11, 2008
Brooklyn, New York

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE CAROL B. AMON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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THE CLERK: Appearances, please.

MR. GOLDBERG: Jeffrey Goldberg for the government along with Mark Gjelaj from Probation. Good morning, Your Honor.

THE COURT: Good morning.

MR. BACHNER: Good morning, Your Honor. Michael Bachner, B-A-C-H-N-E-R, on behalf of Mr. Salvatore Romano.

THE COURT: I think the first matter we need to take up is that the defendant's plea was before the Magistrate Judge to a two count information. He waived indictment and entered a guilty plea. Is there any reason that the Court should not adopt the recommendation of the Magistrate Judge that the plea be accepted?

MR. BACHNER: No, Your Honor. We would suggest that you adopt it.

THE COURT: All right.

[Pause in proceedings - problems with audio.]

THE COURT: Mr. Bachner, what I had asked earlier dealt with the issue of the defendant's plea before the Magistrate Judge. He waived indictment and pled guilty to two counts of an information; one charging conspiracy to commit securities fraud and the other a money laundering charge. I asked whether there was any reason at all why the Court should not accept the plea based on the Magistrate Judge's recommendation.

MR. BACHNER: The answer is, Your Honor, we believe you should accept it.

THE COURT: Does the government know of any reason why I shouldn't accept the plea?

MR. GOLDBERG: No, Your Honor.

THE COURT: All right. Well, I've reviewed the plea minutes and it appears that there is a factual basis for the defendant's plea to both counts and he knowingly and voluntarily waived all of his rights, both in connection with the waiver of indictment and the filing of the information and his guilty plea so I'll accept the plea.

Now, is there any reason why we shouldn't proceed to sentencing?

MR. BACHNER: No, Your Honor.

THE COURT: Have you read the presentence report?

MR. BACHNER: I have, Your Honor.

THE COURT: Mr. Romano, have you read your presentence report?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you discussed it with your counsel?

THE DEFENDANT: Yes, I have.

THE COURT: Are you satisfied to have him represent you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Now, the first issue deals with the guideline range and I believe that there is no challenge to the guideline range? Is that correct?

MR. BACHNER: Correct, Your Honor.

THE COURT: So the guideline range here is a total offense level of 35 with a criminal history category of 3 which is 210 to 263 months.

MR. GOLDBERG: That's correct, Your Honor.

THE COURT: Does the government believe that's correct?

MR. GOLDBERG: It is correct, Your Honor.

THE COURT: All right. I have a letter from you, counsel, dated January 9th and a letter from the government dated January 4th. It's a motion from the government.

First of all, counsel, do you want to be heard?

MR. BACHNER: I would, Your Honor.

Your Honor, the first thing I'd like to just address is the guideline range situation. While we believe the guideline calculation is correct we would ask the Court to consider the following. It's indicated in the report that in 2001 the guidelines were amended to permit the grouping of the money laundering and securities fraud charges that the Second Circuit in U.S. v. Zurc had indicated was inappropriate.

Mr. Romano, although his behavior straddled, it straddled by one month. In other words, the conspiracy charges are produced [sic] December 2001 and the guidelines changed in

November 2001.

THE COURT: But aren't the 2001 guidelines if you used them wouldn't it be higher even? In other words, if you used the guidelines that are in effect today my understanding was his guideline range would be higher even though he'd have the grouping. Am I incorrect about that?

MR. GJELAJ: You're correct, Your Honor. In fact, I believe -- I looked it up this morning as to both levels. That manual [inaudible].

THE COURT: So you have to pick one. It's the one book rule.

MR. BACHNER: Stay where we are.

THE COURT: Okay.

MR. BACHNER: Your Honor, what I'd like to do, Your Honor, is be heard, I think, on what is the most important factors I'd ask the Court to consider.

Your Honor is aware that in 2003 or so Mr. Romano voluntarily retained counsel, learning that there was an investigation ensuing and --

THE COURT: Well, search warrants had been executed on his place; right?

MR. BACHNER: Correct. While search warrants were executed and, certainly, that was indication that there was a problem afoot, Mr. Romano immediately came to counsel and immediately said, I'd like to go in there and cooperate and rectify matters. He did so without an idea if an arrest necessarily would even occur. He did go in there and interestingly enough, Your Honor, his decision to cooperate, while certainly all decisions to cooperate have a self-motivation to them, Mr. Romano's decision, Your Honor, was also motivated by, frankly, a desire to put a lot of this just all behind him. It was an extremely stressful way for him to live his life and I can tell the Court that in the at least twenty proffers that I attended with Mr. Romano with the Manhattan District Attorney's Office we would sit there -- and I don't mean to make myself a witness to the proceedings but I was there with mouths agape at the candidness of Mr. Romano, his memory, his correcting mistakes that they were going under, explaining to them the really complicated minutia of how the crimes occurred. These were very complicated offenses with monies being wired internationally with stocks being manipulated up and down by a variety of brokerage houses through nominee accounts that the D.A.'s office was having a very difficult time following. They had seized a boat load of records but were having a very difficult time paring through them because of the ostensible legitimacy of the transactions. Mr. Romano was also enormously helpful in explaining to them where the other parties fit in; some, frankly, he exonerated and some he put into the mix more than the D.A.'s office at that time had understood they were in the mix and some of the individuals, Your Honor, against whom he gave this information ultimately entered into cooperation agreements with the D.A.'s office and I believe some of them ultimately had dealing with the U.S. Attorney's Office on this as well.

THE COURT: Well, it's not clear to me what the cooperation in the state led to. I mean that's not clear to me at all. Were there other brokers? I mean Mr. Romano and Mr. Quatrochi as I understand it ran these operations. They were the two people in charge of sort of this multimillion dollar fraud. So who did they give up in the state? The brokers?

MR. BACHNER: Well, not just the brokers, Your Honor, and, frankly, I had conversations with the assistant D.A. in that case who is now assigned to the case and he is Mr. Elson Hoe. Elson Hoe is new on the case essentially, maybe within months. The assistant who was running the investigation is no longer at the D.A.'s office, he is in private practice. I've been trying to get letters from them detailing this and I have not, unfortunately, been successful in doing that but I can tell Your Honor that there were numerous arrests and indictments in the state system. Mr. Romano didn't just give up people below him, there were people that in order for this fraudulent conduct to work there were businessmen who owned substantial companies. I mean I think one --

THE COURT: Is that the money laundering aspect of it?

MR. BACHNER: And the manipulation aspect. There was one individual who had a stake if I recall in a professional baseball team. There were some very, very significant individuals who ultimately began cooperating with the Manhattan D.A.'s Office and started giving information as well to the U.S. Attorney's Office in the Eastern District. So it wasn't just a matter of giving information about people below him, he was giving information -- and, frankly, they weren't even all that interested in that at all, they were really interested in the people whom he was dealing with who had interest in the companies that were being manipulated.

THE COURT: What offense did he plead guilty to in the state? I don't even know that.

MR. BACHNER: He plead guilty, Your Honor, in the state to securities fraud. Martin Act violations.

THE COURT: Is it the same charges he pled guilty to here?

MR. GOLDBERG: It's a similar charge. If I can intercede for a moment, Judge.

MR. BACHNER: Sure.

THE COURT: The reason why a lot of this information is not detailed in our letter is because Mr. Romano is in a unique position where he has a separate cooperation with the U.S. Attorney's Office and a cooperation agreement with the Manhattan D.A.'s Office. The information that Mr. Bachner is setting forth, my understanding is that's been called to the attention of the sentencing judge in Manhattan.

THE COURT: Oh, you don't think it's relevant to me?

MR. GOLDBERG: I don't think it's entirely irrelevant but, Your Honor --

THE COURT: Okay.

MR. GOLDBERG: Here's my concern, Judge. My concern is Mr. Romano pled guilty to charges in the state. He's going to be held accountable for that in the state and he will get whatever benefit the state judge wants to give based on his cooperation in the state. The U.S. Attorney's Office -- the help that Mr. Romano gave which was substantial -- and I'm happy to echo Mr. Bachner's sentiments on that point -- go to his federal charges.

THE COURT: But to what extent are his federal charges different from the state charges?

MR. GOLDBERG: Well, first of all, I think the money laundering charges are not in the state. I believe he pled guilty to an enterprise corruption charge which is similar to a securities fraud charge or a RICO charge containing securities fraud. Mr. Hoe actually has been on the case somewhat longer than Mr. Bachner may be aware but the reason why it's not set forth, Judge, is because this is federal charges, federal cooperation. Mr. Bachner is talking about state charges and state cooperation.

THE COURT: Well, how do I take into account what he did in the state? I don't take it into account, I just ignore that and just consider here what he did for the Southern District of New York and for the Eastern District of New York?

MR. GOLDBERG: It's a question that I actually discussed internally in my office to a great degree and there wasn't much insight on it because it's not a common occurrence but, I mean our view is that it's a separate thing. Unfortunately, there would be -- if you do it otherwise there would be a certain level of double counting. That being said, I don't want to in any way minimize the cooperation that Mr. Romano provided at the federal level which was at a minimum thorough, substantial. Everything that Mr. Bachner says is accurate about that and I'll let him continue but I know he's going to highlight in particular the risk to Mr. Romano's life regarding his cooperation which I don't think was present in the state context and so I'll let Mr. Bachner continue.

MR. BACHNER: Well, Your Honor, with all due respect and I appreciate the kind words that Mr. Goldberg has said about Mr. Romano, they're accurate, we think Your Honor should be considering, frankly, all behavior for the following reason. The state sentence pursuant to his plea agreement was -- he pled guilty to an attempted RICO enterprise corruption act charge. That sentence will run concurrent to whatever Your Honor gives Mr. Romano.

THE COURT: That doesn't mean it can't be in excess of what the Court --

MR. BACHNER: It can be. It absolutely can be in excess but to the extent, Your Honor, I think that cooperation rendered by a defendant pursuant to, you know, his cooperation agreement and in other related matters, I think is --

THE COURT: Mr. Bachner, do you represent him in the state court?

MR. BACHNER: I do, Your Honor.

THE COURT: And are the charges different?

MR. BACHNER: There is an overlap. To the extent that there is -- there is certainly an overlap of information, Your Honor. The federal charges -- the state people did not focus in their charges on the organized crime aspects of the case to the state to the level that --

THE COURT: There's no organized crime allegation in the securities fraud case is --

MR. BACHNER: There certainly is that.

THE COURT: In our case? Where?

MR. BACHNER: Not a specific allegation --

MR. GOLDBERG: It's not an organized crime indictment but the securities fraud and money laundering that Mr. Romano -

THE COURT: Oh, I know factually it relates to organized crime but you haven't brought a RICO claim?

MR. GOLDBERG: No. No.

MR. BACHNER: The claim brought in the state court, Your Honor, essentially focuses on the running of a brokerage house as an enterprise and --

THE COURT: But you have no claim -- you're not going to go back to the state court and claim that his sentencing here is double jeopardy for the state --

MR. BACHNER: No. No, we're not doing that.

THE COURT: So they're separate and distinct charges?

MR. BACHNER: Yes, there are, Your Honor, and separate and distinct conduct as well.

THE COURT: I don't know -- I'm not sure what conduct was covered in this indictment to the extent -- I mean because the report indicates just a really long history of going from one company to the next. Is that covered in the charge that you've charged because you concentrate, it seems, on something called Global Net.

MR. GOLDBERG: Global Net was, I believe -- the assistant U.S. Attorney at the time focused on that because there were some overt acts that were chosen on Global Net but the securities fraud conspiracy that Mr. Romano and Mr. Quatrochi for that matter were involved in was a wide ranging securities fraud involving many companies that they were both working for, running, selling securities for --

THE COURT: So like in Paragraph 18, does it cover all of those stock companies there?

MR. GOLDBERG: Yes. Those were actually companies that the defendant --

THE COURT: This was stock; right?

MR. GOLDBERG: Exactly. Those were the subject of the fraudulent scheme. It's not necessarily where they were working.

MR. BACHNER: I hope that --

MR. GOLDBERG: I'm sorry. Can I just interrupt for a moment because I think one thing that's important here is to understand the chronology and Mr. Bachner might help me on this because I joined the office in 2003 when Mr. Romano was going to the Manhattan D.A.'s Office and approaching them for a cooperation.

Mr. Romano's charges in this court were directly related to his desire to assist the federal government in rooting out organized crime's influence in the securities industry and I say that because it wasn't a situation where the U.S. Attorney's Office had an investigation going on, the Manhattan D.A.'s Office had an investigation going on and they both approached him and had him cooperate and plead guilty to the charges. Mr. Romano was dealing with the Manhattan D.A.'s Office, he was being debriefed thoroughly by them but their focus and, frankly, I think -- and this may be not the right word -- their competence in this area was securities. In fact, the unit that Elson Hoe is in and that the predecessor assistant District Attorneys were in was the sort of business and securities fraud unit at the Manhattan D.A.'s Office. It was Mr. Bachner's client who frankly suggested, hey, we should get the FBI in here because I have things to say about organized crime and that's when the Eastern District of New York got involved and started debriefing Mr. Romano and it became clear that he had information that was very valuable to us and that his life was in danger and so that's why he pled guilty to charges here, he could cooperate here, he did enter the Witness Protection Program and so I just thought that might be helpful to talk to you a little bit --

THE COURT: Well, I understood that reading it but that doesn't have any impact on the nature of the crimes that he pled guilty to.

MR. GOLDBERG: I agree.

MR. BACHNER: Your Honor appears a little troubled on some matters and I'd like to see if I can help clarify any of the things that trouble the Court.

I can tell Your Honor on the state level which ultimately, as Mr. Goldberg said, at Mr. Romano's urgings went to the feds not only because he felt that the state was just not competent to deal with the organized crime aspects of this case. Frankly, with all due respect to my old office, competently and intellectually on a lot of the very sophisticated matters that were going on here that the feds had more experience in, Mr. Romano pushed and it created, I can tell the Court, an enormous turf war there for a bit of time as unfortunately happens in law enforcement and ultimately it was all wedded [sic] out as to what he would plead to state-wise, federal-wise, so there wouldn't be this double jeopardy issue.

MR. GOLDBERG: And where the cooperation would lie.

MR. BACHNER: Correct. And where --

THE COURT: What is the sentence he faces in state court?

MR. BACHNER: He plead guilty, Your Honor, to a C felony. The maximum is five to fifteen years and the minimum, theoretically, can be probation. His sentencing judge is Judge Hayes, Your Honor, who as Your Honor may recall was a federal prosecutor for a bit.

Regarding -- and as Mr. Goldberg indicated, what was happening as Mr. Romano began getting information on a state level it became clear that the organized crime connection became clearer and clearer and, frankly, the things that Mr. Romano was being asked to do on a state level were like wearing wires on people who had never had wires worn on them before and if he had been caught would have been, frankly, killed in a heartbeat. Mr. Romano felt that although he was willing to do whatever the state wanted him to do he wanted the protection of the feds who knew how to do this better and felt that they were the ones who really should be controlling the organized crime aspect of the case and that's when they were brought into it.

Mr. Romano, Your Honor, his cooperation in the case -- I put this in my letter -- was not only, you know, in my experience, frankly, again remarkable but really, really unique. He met, Your Honor -- it was literally a full-time job, I mean it became a full-time job for my office as well. I mean we only went to twenty or so proffers if not more but there were just so many more of those being held once he signed his agreement. He would be spending hours and hours and hours on a daily basis going through account statements, bank transactions, looking at pictures, going through the wires that he had been doing. I mean it was really a remarkable job and the D.A.'s Office and I know the U.S. Attorney's Office in a letter have commented on that.

Mr. Goldberg is correct, the impact that his decision to cooperate -- and I say his decision, it was really a decision by him and his family -- was one that not only put his life in serious risk and for the Court to recall it's in my letter as well. He was doing -- there were rumors about potential cooperation by Mr. Romano while he was still out on the street and he continued to cooperate even while those rumors were out there hoping that through his ability, frankly, as a very bright guy and a salesman to be able to convince them that that was just all rumor and innuendo, it wasn't true, I'm a stand-up guy, and he continued to do that and continued to cooperate while his life was not only potentially at risk but, really, we were very worried that it was in actual risk and that he continued to live up to this agreement and to continue to do what he promised the government he would do and, again, Mr. Goldberg is correct, Mr. Romano's motivations for this were not just, oh, I'm going to get arrested and I've got to work something out, it was a decision that was made through this wife, with children involved, to really understand the ramifications of this and there was really a desire by Mr. Romano not to live the life he had been living. It was impacting on his family life, his children's lives. He didn't want these people in his life anymore and there was a decision to root out the problems that he had caused and he went to it with the focus of a law enforcement official. It was really quite something.

MR. GOLDBERG: Judge, I can intercede for a moment and personally attest to the types of debriefings that Mr. Bachner is referring to because I participated in many of those in recent years, not the initial ones obviously.

Sitting with Mr. Romano is a very interesting experience because he is so knowledgeable on these schemes and his recall on level of detail is really astonishing and his willingness to, frankly, have patience with people who may not know it as well as they should is really a credit to him in that regard. I've done that in face-to-face meetings over a matter of hours and I've done it on the phone many, many times, so I just wanted to personally comment on that aspect.

MR. BACHNER: Your Honor, when Mr. Romano decided that he was going to try and change his life and go through this cooperation situation he knew that it would be just a drastic -- not only the risks that he was putting himself in and his wife in and his children in, but it would be a total separation from the life he knew before and the family he knew before. Being in Witness Protection, Your Honor, they've had to sever relationships with family, close family that they haven't been able to see or have had I don't know if any contact or limited contact with since then. The impact, Your Honor, of his cooperation on his family has been such that his youngest daughter is emotionally kind of scarred by it. They've had to move from home to home until they settled. The child sees a therapist, I think, twice a week. His wife, Your Honor, this was as you can imagine her for better or for worse sticking with her husband through this turmoil of their wife hoping that Sal could get his life back together again and that their family could take on some degree of normalcy again. He has three young children, Your Honor, who are at the times in their lives when they're most greatly impacted by their environment, I would argue, and by the behavior of their parents and I must say to the Court, much commendation to Mr.

Romano, that his decision to do this probably was at the best time for his children, a time when at least they have a dad now who is home, who is living honest, who is leading a law-abiding life and he's actually turned into a sort of model citizen but certainly a wonderful citizen. He's become charitable where he lives. He donates active to the church, active in a variety of charitable institutions I detailed for the Court. He has a company in which he employs about ten individuals. He's making an income. He's living, frankly, the old line about if you could use what you've done for good instead of evil. You know, he's decided that all those abilities that he had; his intelligence and his ability to sell, to do the right thing, he's now using the way he probably all should have done it and I know his regrets that he hadn't and he's now living a law-abiding, wonderful life in another community and the concerns, Your Honor, that we have is although his guideline range is high and I know Your Honor knows that under Booker it's advisory for the Court, it's interesting that the six points he gets really emanates is my recollection out of one criminal conviction. It's a 1992 conviction where he's begun making restitution payments on his own and I think because the conduct occurred while he was within a certain amount of time of the conviction while he was on supervised release, etc., it ended up bumping him six points. So it's --

THE COURT: Because --

MR. BACHNER: I understand, Your Honor.

THE COURT: -- the moment he got on supervised release he got engaged in fraud again.

MR. BACHNER: He was a criminal, Your Honor, one hundred percent, Your Honor.

THE COURT: Right.

MR. BACHNER: We're not attempting to minimize it but it's not that he was committing -- I understand that, Your Honor. He was engaged in lots of criminal conduct during that entire time that he wasn't caught for it and that's what he's cooperated about but it's not on the conviction end of it, Your Honor, several convictions. It's one that's emanated in a lot of points and I do understand and I'm not attempting in any way to justify that conduct.

Your Honor, the guideline level that he has, the locomotive behind that is the amounts -- essentially the amount of losses that were sustained as a result of the conduct that many individuals were involved in with him in connection with this conspiracy. Mr. Romano, Your Honor, has tried through the course of the last five years of his life -- for almost five years of his life since he began cooperating -- really to try and prove to himself, his family, society, law enforcement and ultimately to the Court that for whatever you may think of Mr. Romano, one thing that he didn't want Your Honor to ever think of him was that he was going to be someone who was ever going to be standing in front of you again. He's demonstrated for four years of his life, Your Honor -- and I've been involved in enough cases in my career and I know Your Honor has seen more than I have that it's not uncommon for people who cooperate to foul up; they get rearrested, they do the wrong thing. Mr. Romano has demonstrated over four years that that's not a likelihood. Every person has a risk of recidivism. I would argue to the Court that his is through his behavior and not through my words is a low one and the issue becomes, Your Honor, what benefit is there to society to in a lot of ways, I would argue, other than the punishment issue which is certainly a legitimate sentencing point but I would argue in this type of a case, Your Honor, that the punishment aspect of the case is really far outweighed by the detriments. Punishment by incarceratory sentence is really far outweighed by the harms that it would cause not only to Mr. Romano's efforts but to his family's efforts and how he's been living his life now.

Putting Mr. Romano in jail after he has been in Witness Protection for four years, where he has created a law-abiding life, where he has created a new identity --

THE COURT: Mr. Bachner, how does someone ignore the fact that he engaged in a $40 million fraud? I understand that the government has written a letter talking about his cooperation and that the people that he cooperated against if I understand it correctly are significant members of organized crime but were not directly involved in the $40 million fraud. They protected it if that's -- and were paid tribute if I have it right. Do I have that correct?

MR. GOLDBERG: That is right. We would argue that they were directly involved --

THE COURT: Because they protected the --

MR. GOLDBERG: Exactly.

THE COURT: But there were also allegations of the solicitation of people to hurt competitors and also there is a concern that I have as well about the information on Pages 9 and 10 of your letter.

MR. GOLDBERG: Yes, Your Honor.

THE COURT: That, I take it, was a solicitation to "obstruct justice"?

MR. GOLDBERG: It was and it's one that Mr. Romano reported to the government as part of his cooperation --

THE COURT: Volunteered.

MR. GOLDBERG: Volunteered.

THE COURT: In other words, the government didn't have that information.

MR. GOLDBERG: We did not and he was prepared to testify about it as recent --

THE COURT: But what has been done about that information?

MR. GOLDBERG: That information has been the basis --

one major basis of a disqualification motion. I can't comment on any pending investigations in that regard.

THE COURT: Where was the plea taken to which that relates? Was that in this Court?

MR. GOLDBERG: It was.

THE COURT: Before whom?

MR. GOLDBERG: It was Judge Sifton's case but Judge Cogan actually took the guilty pleas of Mr. Gamarano and Mr. Scotto.

THE COURT: No, that's not what I'm talking about.

MR. GOLDBERG: Oh, I'm sorry.

THE COURT: I'm talking about --

MR. GOLDBERG: Oh, it was Mr. Minvera in the state case. I don't know -- we tried to get older details but I'm not sure. I believe it was Manhattan state court. It wasn't federal, I know that.

THE COURT: It seems like somebody should be made aware of what happened.

MR. GOLDBERG: I can't comment, Judge, on what we're doing in that regard.

THE COURT: All right. I just meant in connection with the individual Minerva should understand.

MR. GOLDBERG: I understand that.

THE COURT: I mean it's just troubling to read that.

MR. GOLDBERG: It is, Judge.

THE COURT: But I understand that that's something, again, that Mr. Romano volunteered.

MR. GOLDBERG: Absolutely and, frankly -- and I hope this comes clear in the letter -- the sequence of events with regard to that case, I do believe that Mr. Romano's willingness under his agreement to testify about those matters led in large degree to the guilty pleas of Mr. Gamarano and Mr. Scotto which alleviated the Court and Judge Sifton of what would have been probably a six week trial. That was an extensive RICO trial.

Anyway, I didn't mean to interrupt, Mr. Bachner.

MR. BACHNER: But that is, Your Honor, the very kind of honesty that Mr. Romano displayed in connection with his cooperation. He didn't just volunteer what he thought they knew, he told them everything that he had done that they had no idea about and he put himself in that position.

Your Honor, there is a $40 million fraud here. We all know that and it's a high number. That all being said, Your Honor, there is also -- to the extent, Your Honor, that this was a case that there was no cooperation on and we were trying to work out a plea, etc., it's not uncommon, Your Honor, for defendants to have losses apportioned in cases like this and that he's essentially because he's a cooperating defendant being assessed, frankly, in an amount -- again, without minimizing the conduct -- often times an amount that's greater than when a defendant works out his own disposition and I bring to the Court's attention that Mr. Gamarano -- in the Gamarano matter I understand that there was a -- it's detailed in the letter that there was a plea entered by Mr. Gamarano, who frankly was active in the securities fraud and no one disputes that and while it was protection, he was certainly getting paid percentages of what was going on in securities fraud and Gamarano knew exactly about the manipulation of the stocks. I think the plea agreement is somewhere in the three or four year range for Mr. Gamarano.

THE COURT: Well, how should that impact the Court? Mr. Goldberg, how does that impact the Court?

MR. GOLDBERG: Judge, as you know, we don't [inaudible].

THE COURT: No, tell me how you think it impacts the Court. Gamarano and Scotto, they enter pleas to offenses that carried 33 to 41 months?

MR. GOLDBERG: That was a very complicated situation, Judge, and in fact sentencing is still pending because Mr. Gamarano's criminal history came in higher than what the criminal history reports had indicated so his guideline was actually according to Judge Sifton a bit higher. We're in the process of briefing that issue and sentencing, I think, is set for January 31st. I was in trial in Central Islip. I wasn't at that proceeding but that's my understanding of what happened.

These cases all have different circumstances and Mr. Romano is a cooperating witness. Mr. Gamarano did not cooperate, he pled guilty. I mean there were different charges that he pled guilty to. He pled guilty to discrete extortion charges. It's very difficult to say that that could be some sort of guide post and I certainly don't want to suggest that because as you know that's not what we do, we don't make recommendations, that's for Your Honor to determine but I think all of these things are relevant. Everything that we put in our letter including Mr. Mariani's sentence in the Gotti case but, again, it's all different circumstances, it's very hard to use those as guide posts and I don't want to attempt to do so.

MR. BACHNER: Again, that all being said and I understand Mr. Goldberg's position but, certainly, there is I would argue to the Court some need to make sure that there is some degree of equitable treatment amongst the way people are sentenced and to the extent Mr. Romano, Your Honor, is looking at the number he's looking at largely because he did cooperate as compared to individuals who decided not to, I think that's something -- it's certainly a factor that Your Honor should give a lot of thought to and I assume Your Honor will.

Your Honor, but again, despite all the cooperation issues and all of the things that Mr. Romano did which were so unique in what he did I really do ask Your Honor to please pay a lot of attention to and consideration to the impacts on the

Romano family and the impacts, Your Honor, of a jail sentence to be very direct with Your Honor on what they've been able to build as a result of turning over a new leaf and trying to do the right thing, putting his life at risk on a daily basis, Your Honor, for such a long period of time and, Your Honor, I know lawyers always say my client has been punished enough, he's been punished enough but, Your Honor, in a case like this where the stress, the work and the effort that Mr. Romano has put in to try and rectify a lot of the harm that he's committed, that stress, Your Honor, was a time so significant on him that he didn't know if he could proceed. It was one in which he woke up every morning wondering if he was going to be going to sleep that night. He went to bed at night wondering if his children were going to be okay, if his wife was going to be okay, and he understands that that's the bed that he made, he understands that but the impact of Your Honor's sentence will have such a direct impact on what will happen with his family. The concern, for example, is that because Mrs. Romano now relies so heavily and exclusively on Salvatore's ability to earn for the family that she's concerned that because they've now become so wedded to the community, to the social matter of the community, the economic functions of the community that they're just going to have to leave and they're not going to be able to explain where Sal went, what's going on with Sal. There's concerns that --

THE COURT: Don't the marshals continue to supplement or not if someone has been relocated?

MR. GOLDBERG: Locating, they do. They do.

THE COURT: Hasn't the family been relocated?

MR. GOLDBERG: They have. I think --

THE COURT: So if Mr. Romano were to be incarcerated wouldn't the family receive support or not? Financial support?

MR. GOLDBERG: I frankly don't -- no, I thought you meant relocated again.

THE COURT: Oh.

MR. BACHNER: What would have to happen, Your Honor, is that Mr. Romano has and in communicating with his wife, their position is that they would have to -- they would just have to start all over again. It would be too dangerous in her mind to be able to consider, you know, explaining to the people what's going on here and people making surmises did he go to jail, what's going on, is there something else with this family, and they're just -- you know, it's a very paranoid way to live your life as it is and there's a lot of heightened paranoia when things like this occur if you were to be removed from the family. Again, much to Mr. Romano's credit as soon as he got himself on his feet he severed himself from the public dole. He didn't continue to take money from the government. He wanted to make a living and do the right thing on his own and that's what he did as soon as he was able to do it.

Your Honor, you know, people do change and we've seen a lot of times people don't and, you know, tigers lose their stripes. Mr. Romano, Your Honor, all I can say is like I said before, through his actions and behavior over the last four years has really shown him to be one of those unique and remarkable individuals that have said, I am not going to do this anymore, I do want to change and has. He really is not the same person he was when he was living the life he was living and I think when he made that decision, that epiphany whatever it was, maybe it was the search warrant that woke him up and said, I got to change my life, whatever that epiphany was it's changed him and he's not that same person and, you know, he's done so much and even the impact on the lives of his employees, Your Honor, by him going away is significant. He runs the place, he's the guy that generates the business. You know, he's really created for himself a new world, Your Honor, and I would ask the Court to consider the impact on his family, the enormous cooperation he's given at the risk of his life on a daily basis over the course of years, his desire and availability to testify at very serious matters for the benefit of the government and for the state, the fact that pleas have been entered as a result of his knowing cooperation in cases and that he's a person, Your Honor, who has really dedicated himself to try and become a new person, that Your Honor take those factors all into consideration and impose a sentence, Your Honor, most respectfully, that does not include a jail sentence.

THE COURT: Before I hear from Mr. Romano let me just ask a couple of questions to you, Mr. Goldberg.

I take it in terms of Mr. Quatrochi --

MR. GOLDBERG: Your Honor --

THE COURT: My question is simply relative roles.

MR. GOLDBERG: Okay. Fine. Sorry, Judge.

THE COURT: I take it that his role was somewhat less than Mr. Romano and his criminal history category was zero before that; correct?

MR. GOLDBERG: That's true. His criminal history category is zero.

THE COURT: And I wonder if you see him including the entire picture to be less substantially involved?

MR. GOLDBERG: I've thought about that question at great length, Judge.

THE COURT: It's one that needs to be answered.

MR. GOLDBERG: It does. It's a very difficult question on many levels. Did Joseph Quatrochi know everything that Mr. Romano was doing in connection with the securities fraud and money laundering? I'd say essentially yes because of the close relationship that Mr. Romano and Mr. Quatrochi had. There's no denying that Mr. Romano's role in the securities fraud and money laundering was slightly significant insofar as, I think Mr. Romano would acknowledge --

THE COURT: More significant.

MR. GOLDBERG: -- more significant and I think he would acknowledge that he had closer contacts to members and associates of organized crime in the first instance.

THE DEFENDANT: Yes. Yes.

MR. GOLDBERG: Did Joseph Quatrochi piggyback on that? Sure. But I think as Mr. Romano just indicated, he had the connections in the first instance. I would also note that -- I think Mr. Romano would probably also acknowledge and I'm not certainly asking him to right now -- that it was Mr. Romano who had the prior conviction and who had to sort of work in the shadows and Mr. Romano needed Joseph Quatrochi to act as frontman, perhaps, not the other way around.

THE DEFENDANT: Absolutely.

MR. GOLDBERG: I guess -- I don't know if that answers --

THE COURT: But considering all factors including the entire picture he would be a less substantial figure. That's all that I'm saying in terms of --

MR. GOLDBERG: Quatrochi would be?

THE COURT: Yes.

MR. GOLDBERG: Yes, but I don't want to minimize Mr. Quatrochi's role.

THE COURT: I know you're not minimizing it but to the extent we're talking about the entire picture including whatever motions that may have been made, the motions are similar to the -- I take it in their content --

MR. GOLDBERG: Yes.

THE COURT: All right.

MR. BACHNER: Your Honor, on that point that you bring up we agree with everything that's been stated here but one thing I think that's also significant is that my understanding is that Mr. Quatrochi became someone who may have been affiliated with the government at the urging of Mr. Romano so while Quatrochi's involvement was less, had Mr. Romano not cooperated there would have been -- it's unlikely that Quatrochi would have.

MR. GOLDBERG: That's a fair statement.

THE COURT: Okay. All right. Mr. Romano, do you want to say anything?

THE DEFENDANT: Yes, if you don't mind, Your Honor. I mean I'm sitting here and I'm listening to Mr. Goldberg and Mr. Bachner say all these nice things about me and, believe me, it's greatly appreciated and I guess your job is very, very difficult because you listen to my attorney making argument about why I shouldn't go to prison and you're looking at a piece of paperwork that says that there were $40 million robbed here and all I can do is maybe just try to clarify that a little bit.

When this investigation began from the District Attorney's Office and I agreed to go in and cooperate fully it wasn't a fear of prison because, believe me, at that time I had no fear of prison whatsoever, I really at that point wanted to make a life changing adjustment and really get out of this life. If you're in the life as long as me and you understand how it's changed in the last ten years, believe me, it's not a life you want to participate in back then nor now but I really wanted out of that life.

THE COURT: Was it better before? I don't understand what you're trying to say.

THE DEFENDANT: No, of course, it can never be better but let's just say whatever little honor there was ten years ago there's no honor today if that makes any sense to you.

So when we did come in and we did look to have this out of our life and stop it and I started cooperating at that time it was only with the District Attorney's Office and then that precipitated into the Southern and Eastern Districts. So a lot of the charges that are here against me I created by mapping this out to them because as far as I'm concerned at that time there was really no imminent investigation by the FBI.

THE COURT: Well, some of the extortion conduct for instance is something the government didn't know about that you told them about.

THE DEFENDANT: Correct. Correct. But with that being said, as I started to work and I started to wear a wire and I started to become an informant and do all of this, this became a full-time job for five years. This was consuming on the brain, consuming physically, I got very, very ill during this; Diabetes, so on and so forth and it precipitated that condition. This was a horror show in my life for five years. This was not a one week thing, a two week thing. You know, we've done a lot of suffering but at the end of the day it's still about the victims that lost $40 million.

First of all, if I could touch on that for a second. You know, we had over $350 million assets under management. It was about ten or twelve stocks that we manipulated and controlled and not to belittle what that number was but essentially those stocks ran up not only due to our manipulation but due to the fact that the hot internet sector in the late nineties, those stocks ran up to $20.00 or $30.00 without us. When that market blew up and those stocks came crashing down to zero you had a major market correction. It wasn't like Sal and Joe lined their pockets with $40 million. Our take was more like ten.

THE COURT: Ten million?

THE DEFENDANT: Ten million. I'm sorry, Your Honor, and I'm not minimizing --

THE COURT: Not a bad profit.

THE DEFENDANT: Of course, Your Honor, please. I'm not minimizing that number. I would never do that. All I'm trying to say is I have the ability to pay back $10 million. I'm forty years old, I can work, I'm earning money in the last two years -- six figures. I expect that to go to a high six figures. If this case is about the victims and me paying it back the only shot I would have is working. That's the only way I can do that.

THE COURT: Well, that's another issue. Let me just ask the government. I get letters here that say, you know, restitution can't be calculated.

MR. GOLDBERG: It really can't, Judge, with respect to the securities fraud. I think Probation put it best when they cited the statute involving impracticable calculation.

I will note that there is an outstanding restitution with respect to Mr. Romano's 1992 case. As of July it was $675,000.00 that he owed. I know he has resumed actively making payments on that but that is a number that's out there that --

THE COURT: So what are the financial penalties available here?

MR. GOLDBERG: Well, Probation has concluded that he is unable to pay a fine. He's obviously -- I mean that report was filed September 2006 and Mr. Romano is apparently doing much better now. I don't know what Probation's position on that is but he does have this outstanding balance of $675,000.00 minus whatever payments he has made in recent months.

I don't know if Mr. Bachner wants to speak to --

THE COURT: I didn't mean to interrupt, Mr. Romano, you can go ahead and continue.

THE DEFENDANT: Oh, no, not at all. All I'm trying to say is I've paid for five years and my family has paid for five years and in addition to that, you know, I mean let's put my family aside for a second, if this case is about -- in my regard anyway, the victims -- then what I'm doing the last couple of years now; working and earning and trying to do the right thing, I've voluntarily took myself off any financial subsistence from the government that they tried to give me. I volunteered that I get taken off because I was doing well. I began paying restitution and I volunteered that earlier from my 1992 case as well. Everything I've been doing now has been driven by money and doing the right thing by the victims and, you know, at the same token trying to earn back my wife and my family's respect. My children were very, very young at the time and didn't really know much about me outside of being their dad. As they get a little older and they understand why I'm working so many hours and, you know, that I'm trying to earn and I'm trying to get back on my feet and they understand that, they know nothing about my prior problems.

We're pillars in our community now because we've been there for three or four years now and if I lose any of that momentum, obviously, it's going to hurt the victims that lost $40 million because I'm going to be unable to pay.

THE COURT: Well, nobody knows who they are so you're not going to be able to pay them anyway. I guess you have the restitution from Judge Dearie's case that you could pay.

THE DEFENDANT: Which I plan on doing as well but I mean this has been very, very difficult for my family. I mean my wife basically lived every day not knowing if I would come home that day. She knew what I was doing, she knew I was cooperating. I mean I just wish you could really understand what it is I went -- for five years and it's very difficult looking at ten pieces of paper to really understand the magnitude of what we did here. This was never started by twenty guys in a room saying let's rob the public today. We dominated and controlled those ten or fifteen stocks and we were the worst people in the world during that period. All of that is changed. Every effort I make today is to pay back the money. Every effort is to bring back my family's respect and completely change my life. None of that was precipitated by my fear of prison at the time when I went in. I went in because I wanted out and I wanted to change everything. That's what started this whole thing.

MR. BACHNER: Your Honor, I know Mr. Romano wants to say one other thing but I didn't want to, frankly -- in my experience I didn't want to turn the sentencing issue into a money issue about how much was lost, how much wasn't lost, but I do understand there's an impact on the guidelines.

One of the problems because it was impractical if not impossible to find out who the victims were, it was really hard or impractical to even determine, you know, if an investor invested money, did he sell the stock for a profit, did he lose any of that money? I'm not sure if that $40 million is in other words the amount of money that the investors invested or the amount of money that they may have invested and, perhaps, they sold out at a later time. So, you know, sometimes these calculations are based upon looking at the brokerage records and saying the investors invested $40 million.

THE DEFENDANT: Can I say one thing in regard to that? It also never factored in that a lot of the investors didn't make money by the stocks rallying as well so I don't think that number is offsetted [sic] by any gains as well. It's very difficult.

[Pause in proceedings.]

THE COURT: I'm sorry, Mr. Romano, you were still speaking. I'm sorry.

THE DEFENDANT: No, no, not at all. You just have no idea how unbelievably sorry we are; myself, my family, how we've lived and how we're trying to change things and how we are. It's so hard that we're now set up in our new -- it's a very atypical circumstance, I guess, Your Honor, the fact that I didn't do jail time and then got thrown back into society. After this happened -- and I lost everything; my respect, credibility, family, we lost -- I mean we were a close Italian family. We lost everything and everybody. My wife made this move with me, we started over. It was very, very difficult but for the last three or four years now it's been going so well for all of us and I hope for the victims as well. I'm paying back restitution. I did that voluntarily. I did not do that to try to look good in your courtroom. I did it because everything in my life has changed. We're trying to start over. We have a little momentum now for the last 24 to 30 months that we've gotten and it would just be a shame if we would lose that momentum and I think everybody suffers especially the victims.

Thank you, Your Honor.

THE COURT: Okay. Mr. Goldberg, I think I asked you a question before you got to say anything. I don't know if you wanted to add anything further.

MR. GOLDBERG: No, Your Honor.

THE COURT: Well, you know, I think this is an extraordinarily difficult sentencing. The Court has to consider the factors under 3553 and the cases -- of course, the case law with respect to the guidelines talk about the fact that, you know, the first thing that the government has to look

-- the Court has to look at rather, or one of the first things is at least to determine a guideline range. Here, the guideline range isn't challenged, it's extraordinarily high. It's 210 to 262 and that gives the defendant the benefit of an earlier guideline calculation, one based upon, I think, the 2000 book because employing the guidelines today would make it even higher. So that's the first thing that has to be looked at is the guideline range and it's that high because of the fact that this was an extraordinarily serious fraud that happened over a lengthy period of time in which a great deal of money was lost for investors. Now, you know, I recognize that there may be some play in that guideline range and, you know, it could arguably be somewhat lower than that but even if you were to consider that an argument may be made that, oh well, okay, we won't group, you know, or we will group the money laundering, still, I think your best case scenario probably at a guidelines range that is still very high which would be somewhere in the neighborhood of 168 months, I think, even if we were to consider those types of arguments. So the guideline range is very high.

Now, the Court has to impose a sentence that's sufficient but not greater than necessary to comply with certain purposes that are set forth in Paragraph 2 and that's the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense and then as a general deterrent -- to afford adequate deterrence to criminal conduct that's a general deterrent feature. The Court has to consider the nature and circumstances of the offense and the history and characteristics of the defendant and, of course, one troubling factor here is that Mr. Romano had a prior fraud conviction in this court and engaged in this long course of fraudulent conduct, began that while on supervised release for that offense. So that is one of the factors here that the Court has to take into account. There is other serious conduct of Mr. Romano's that's set forth in the report that the Court as a practical matter understands that this is conduct that would have not come to light but for Mr. Romano's cooperation and his forthright cooperation for the government. He certainly shouldn't stand in a worse position before the Court because of that. Certainly, he shouldn't be in a worse position because he decided to cooperate as opposed to just simply entering a guilty plea. So the Court understands and takes that into account.

The Court has also taken into account the significance of his cooperation. I take it it's the government's position that the people that -- individuals that Mr. Romano cooperated against are more significant individuals than he in the criminal scheme of things. Is that correct, Mr. Goldberg?

MR. GOLDBERG: That is correct. John Gamarano was a made member of the Gambino family for decades. William Scotto is currently a solider in the Gambino family. Louis Mariani was a long-time associate.

THE COURT: So, you know, that is an important factor that he has offered cooperation against significant individuals and in terms of protecting the public from further crimes of the defendant I am prepared to accept what he says about his genuine contrition and his desire to lead a new life.

I think under all the circumstances though in light of the significance of the fraud and it was a very, very serious fraud in which people lost substantial amounts of money for which there was a guideline, obviously, the Court is going to depart enormously from that guideline but in light of the nature of the fraud -- and this is giving him full credence for everything that the government has said about his cooperation in accepting at all, in this Court's view a probationary sentence would not be one that would comply with the factors set forth in 3553(a) in light of both his prior conviction and the significance of his criminal conduct. So I'm going to sentence Mr. Romano to the custody of the Bureau of Prisons on Count One for a period of 24 months to be followed by a three year term of supervised release. I think there is some ability to pay a fine in light of his enormous intelligence and his business skills. So I'm going to impose a fine of $10,000.00, as I said, a three year term of supervised release, a $100.00 special assessment. I'm going to impose the same sentence on Count Two to run concurrently with the sentence imposed on Count One, an additional $10,000.00 fine to be consecutive and a consecutive $100.00 special assessment and, again, a three year term of supervised release which is as well -- that would be concurrent.

Is there anything further we need to take up?

MR. GOLDBERG: There is, Your Honor, there is the matter of forfeiture. In the cooperation agreement the defendant agreed to a forfeiture order of $332,500.00. If I could have the Court just note that for the record and I will provide the Court with a copy of the forfeiture order to sign as soon as I get back to my office.

THE COURT: All right. Anything further that we need to take up?

MR. GOLDBERG: The only other thing is I'd just like to put on the record that I would just note that if Mr. Bachner wants to request a fairly long surrender date that would be consistent with the government's interest because there are special procedures that need to be done to place Mr. Romano in a witness security prison facility and that takes some time to --

THE COURT: How long?

MR. GOLDBERG: I believe it's sixty to ninety days but I will check. If we could do ninety days that would be appreciated and if it's shorter I will contact the Court.

I was called by the Office of Enforcement Operations and they did call that to my attention was that if Mr. Romano does, indeed, get an incarceratory sentence, please ask for some extra time as there are special procedures because we need to make sure he's in the right facility.

THE COURT: All right. Ms. Holly, what is -- ninety days?

MR. GOLDBERG: Ninety days would be fair.

THE COURT: To what extent -- what kind of bail conditions are --

MR. GOLDBERG: A personal recognizance bond. I don't --

THE COURT: To what extent is he -- he's only in the marshal's custody in terms of transferring back and forth; correct?

MR. GOLDBERG: That's correct and we have no problem with that, Judge. Mr. Romano has been completely compliant with everything we've ever asked him.

THE COURT: All right. Ms. Holly, what would a day --

THE CLERK: That would be Friday, Judge, April 11th.

THE COURT: Okay and the marshals handle that so --

MR. GOLDBERG: Right. I will communicate that.

THE COURT: All right. Is there anything else that I've overlooked? Oh, Mr. Romano, I believe you have a right to appeal. Any notice of appeal would have to be filed within ten days.

MR. BACHNER: Thank you, Your Honor.

THE CLERK: Judge, what about a payment schedule for the fines?

THE COURT: Well, the fines would have to be paid within a year of his supervised release term.

MR. GOLDBERG: And I was reminded by Probation that I believe Your Honor is making the finding about restitution being impracticable under 3665.

THE COURT: I have nobody to order restitution to because the information hasn't been provided to me and I accept the representation that it's too difficult to do.

MR. GOLDBERG: Thank you, Your Honor.

THE COURT: Okay.

MR. BACHNER: Thank you.

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I certify that the foregoing is a transcript from an electronic sound recording of the proceedings in the above-entitled matter.

CARLA NUTTER

Dated: January 14, 2008